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The New York State 911 Coordinators Association (NYS 911CA) is encouraged by the recent FCC discussion of 911 Fee Diversion, pursuant to Dockets 20-291 and 09-14. As representatives of 911 organizations and Public Safety Answering Points throughout the State of New York, we witness 911 fee diversion firsthand. The State of New York diverts critical revenues away from organizations that perform lifesaving work into the General Fund with no accountability as to how the revenues are spent or allocated. Past requests using Freedom of Information Law have yielded little information as to how the State uses funds taken from consumers. Prior to 2010, the wireless surcharge was explicitly identified as a 911 surcharge. Reports from State of New York Comptrollers identified abuses of those funds, including using 911 fees for dry cleaning and helicopter maintenance¹. In 2010, the surcharge was renamed as a public safety communications surcharge. The law states 47.1% of all revenues collected go directly to the general fund². Based on 2019 local surcharge revenues, the State of New York likely collected over \$200 million in surcharge revenues³, yet only \$75 million were allocated for public safety communications. Of that \$75 million, only \$10 million is allocated specifically for 911 operations, representing less than 5% of all revenues collected⁴.

¹ New York State Office of the State Comptroller Report: Division of State Police Cellular Surcharge Revenues 201-S-27. Found at <https://web.osc.state.ny.us/audits/allaudits/093002/01s27.pdf>

² The Laws Of New York Consolidated Laws Tax Article 9: Corporation Tax, Section 186-F Public Safety Communications Surcharge. Found at <https://www.nysenate.gov/legislation/laws/TAX/186-F>

³ New York State Department of Taxation and Finance, Local Wireless Surcharges by Jurisdiction. Found at https://www.tax.ny.gov/research/stats/statistics/sales_tax/government/Wireless_Surcharge.htm

⁴ The Laws Of New York Consolidated Laws Tax Article 9: Corporation Tax, Section 186-F Public Safety Communications Surcharge. Found at <https://www.nysenate.gov/legislation/laws/TAX/186-F>

NYS 911CA supports allocation of public safety communications surcharge revenues for Public Safety Answering Point (PSAP) radio and phone equipment, Next Generation 911 (NG-911) infrastructure (state and local), PSAP internet and phone connections, PSAP facility and utility costs, PSAP personnel costs, Computer Aided Dispatch (CAD) and other related records management systems, networking infrastructure, and public safety land mobile radio system (LMR) infrastructure. As identified by the FCC Notice of Inquiry, dated September 9, 2020, it is difficult to identify clear demarcation points and clear standards for allowable expenditures using 911 or public safety communications surcharges. Some members of the organization believe the demarcation points should be the end of the antenna for LMR systems and the interconnection to the public telephone switch / internet. Some believe the entire public safety communications network, including subscriber equipment, should be permitted as a nexus to 911. With NG-911 already implemented in some states, the demarcation point becomes much more difficult to identify given the nebulous nature of the Emergency Services Information Network (ESINET), which includes phone, LMR, and data networks. We believe the FCC should issue best practices guidance for state and local municipalities but avoid overly strict definitions that may limit implementations of new technologies and shared services operations.

NYS 911CA objects to funds being funneled directly into state and local general fund accounts. All 911 or public safety communications surcharge revenues should be collected and distributed to identified accounts and held in trust in case revenues exceed expenditures for a particular budget cycle. Expenditures of revenues should be identifiable and auditable according to generally accepted accounting practices so taxpayers have transparency of how their money is spent. Local and state voters and taxpayers can then hold their leaders accountable for how 911 revenues are used. The U.S. Virgin Islands example, provided in the FCC Notice of Inquiry provides an interesting model for both states and local municipalities⁵.

In a federal system of government, it is difficult for the United States Government to hold states accountable for how they spend locally sourced revenues based on the Tenth Amendment. That said, there are clear examples of both federal and state governments using grant funding to ensure compliance to standards. In New York, state guidelines and grant

⁵ FCC (2020) 911 Fee Diversion; New and Emerging Technologies 911 Improvement Act of 2008 Notice of Inquiry - PS Docket Nos. 20-291 and 09-14. Found at <https://docs.fcc.gov/public/attachments/DOC-366784A1.pdf>

requirements create incentives for compliance to standards⁶. For the State of New York, the paucity of federal grant funds compared to the state's surcharge revenues make enforcement highly unlikely. As stated earlier, the State of New York collected over \$200 million in 2019, more than the federal government allocated for the entire United States in 911 grant funding. The question becomes, "What levers of influence can the federal government use to curb 911 fee diversion?"

NYS 911CA believes some measures will be more effective than others. We believe the FCC can withhold frequency licenses and renewals to force compliance with federal standards regarding 911 fee diversion. This may be one of the most effective measures as licensing is clearly within the authority of the FCC. States need frequencies and bandwidth to operate their communications systems and this is a tool the FCC can effectively use to pressure states. Other related grants from federal agencies such as Department of Homeland Security, Department of Justice, and National Highway Traffic Safety Administration may be another lever. However, the federal government may face legal challenges regarding the nexus to 911 fee diversion. Requiring service providers provide bill warnings is not effective since most consumers rarely read their bills and it would create a regulatory burden on third parties.

We thank the FCC for their time and consideration in the matter of 911 fee Diversion. NYS 911CA agrees with the FCC that the State of New York is diverting 911 fees and surcharges from their intended purpose. Creating a standardized means of collecting, distributing, and expending 911 fees and surcharges in a federal system may prove impossible as each state and local municipality have different needs, tax bases, and authorizing legislation. That is both the beauty and challenge of a federal system of government. We hope the FCC continues to provide guidance and transparency regarding 911 fee diversion as this issue is critical for the advancement of NG-911. Ideally, a 911 caller should receive the same level of service regardless of where in the United States they make the call and what device they use. In reality, each municipality confronts challenges presented by the limited resources they possess. Diverting 911 fees makes those challenges harder to overcome.

⁶ Sharpe, S. (2018). 9-1-1 Leadership: Perceptions of Evidence-Based Quality Improvement. Found at https://fisherpub.sjfc.edu/cgi/viewcontent.cgi?article=1356&context=education_etd